

UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

C.F. COMMUNICATIONS CORP.,)
et al.,)
Complainants,)
v.)
CENTURY TELEPHONE OF)
WISCONSIN, INC., et al.,)
Defendants.)

EB Docket No. 01-99

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

C.F. COMMUNICATIONS CORP.,)	
et al.,)	
Complainants,)	
)	
v.)	EB Docket No. 01-99
)	
CENTURY TELEPHONE OF)	
WISCONSIN, INC., et al.,)	
Defendants.)	

TWA 363
Federal Communications Comm.
445 12th Street, S.W.
Washington, D.C.

Thursday,
October 11, 2001

The parties met, pursuant to notice of the
Commission, at 9:30 a.m.

BEFORE: HONORABLE ARTHUR I. STEINBERG
Administrative Law Judge

APPEARANCES:

For the Complainants:

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P R O C E E D I N G S

(9:30 a.m.)

JUDGE STEINBERG: Okay. On the record. This is another prehearing conference in EB Docket Number 01-99. We scheduled this conference so that I could be brought up to date on whatever's been going on in the last week in terms of settlement.

Let me just note the appearances are largely the same for Alcazar Homes. And the other companies are represented by Dickstein, Shapiro. There's Katherine J. Henry and -- is it Charles Mehler?

MR. MEHLER: Yes.

JUDGE STEINBERG: Charles Mehler. There's no appearance on behalf of Best Payphones. There's for Verizon Company John M. Goodman and Sherry A. Ingram. And for the Carolina Telephone and Telegraph Company and the two other Sprint Companies is Mary J. Sisak; and for the Chief Enforcement Bureau, FCC, Tejal Mehta.

Okay. Let's get right to the status of the cases. Presumably, everything that we settled on the last time is still settled.

MS. HENRY: I'm pleased to report that none of that has changed.

JUDGE STEINBERG: Okay. So let's get, hopefully, to the new stuff. Let's take Alcazar Homes first. And that

1 was a complaint filed against Verizon.

2 MS. HENRY: Let me clear up a couple of things
3 from last time. I don't know what you show under your list,
4 but Just-Tel. Just-Tel was not finally settled, but I had
5 to confirm with the client I have, and we have, an agreement
6 in principle.

7 JUDGE STEINBERG: Okay.

8 MS. HENRY: That one is gone. So you can show
9 that as being removed from your list.

10 JUDGE STEINBERG: Right.

11 MS. HENRY: And I think these are really broken
12 down into now two groups, Nypay, Nypay Communications, which
13 I believe -- will that show up as Nypay on his list? We've
14 reached an agreement to dismiss that claim.

15 JUDGE STEINBERG: Which one is Nypay?

16 MR. MEHLER: It would also be under ETS.

17 MS. HENRY: ETS, ETS.

18 JUDGE STEINBERG: Well, that's 93-34?

19 MR. MEHLER: Yes.

20 MS. HENRY: And we have reached agreement with
21 Verizon to dismiss -- an agreement in principle to dismiss
22 that claim.

23 JUDGE STEINBERG: Okay.

24 MS. HENRY: So that will be off the list. That
25 leaves Alcazar --

1 JUDGE STEINBERG: And Ascom.

2 MS. HENRY: -- Ascom, and Millicom --

3 JUDGE STEINBERG: Right.

4 MS. HENRY: -- are the three remaining. On
5 Alcazar and Ascom, we have over the last week responded to
6 quite a few questions that Verizon has had by documentation,
7 et cetera.

8 We have engaged in negotiations, including most
9 recently right in the hall. I would like to think we're
10 close on those two, but we don't have a settlement at this
11 point. We are still negotiating.

12 JUDGE STEINBERG: Okay. That's Alcazar and --

13 MS. HENRY: Ascom.

14 JUDGE STEINBERG: -- and Ascom?

15 MS. HENRY: Yes. So we are in extensive
16 negotiations with them, on those two cases with Verizon.
17 Millicom is a slightly different story for a couple of
18 reasons.

19 We have responded to various inquiries that
20 Verizon has had. And we have begun some negotiations with
21 Verizon. There are a couple of issues that we have to sort
22 out. And there's something that's affecting both trial
23 preparation and my ability to negotiate with Verizon or at
24 least to get to that point of having a good offer.

25 We can't locate our client and haven't been able

1 to since last Thursday. We know he had to undergo a medical
2 procedure this week, but we understood it was to be Friday.
3 And we are looking extensively for him. But we cannot get
4 him to finalize the affidavit. We cannot, you know, get him
5 to discuss a settlement negotiation.

6 If we can't find him today, I may be forced to
7 file a motion with you, seeking some sort of relief if we
8 can determine what the situation is. I don't know if it's a
9 medical emergency, if he's been called out of the country,
10 et cetera, but we're using every means we know to try to
11 locate him. So I don't quite honestly know where that one's
12 going to go.

13 JUDGE STEINBERG: Okay.

14 MS. HENRY: We also have the Ascom claim against
15 Sprint. And we received an offer from Sprint and had
16 responded that we really didn't think we were negotiating at
17 that point.

18 Sprint, after our last hearing, Sprint posed some
19 inquiries to us. We did research, put together some
20 information, got it to Sprint, but didn't do so until last
21 night, because we had to have client authorization to give
22 this information to Sprint. But we did give it to Sprint
23 last night.

24 So Sprint, in all fairness, hasn't had an
25 opportunity to digest it or to respond to us. I don't know

1 where that stands. It's really in Sprint's court at this
2 point.

3 JUDGE STEINBERG: Okay. Let me hear from Mr.
4 Goodman. Do you have anything to add?

5 MR. GOODMAN: I have nothing to add to the
6 substance of what Ms. Henry said about our discussion.

7 JUDGE STEINBERG: Okay. Ms. Sisak, do you have
8 anything to add?

9 MS. SISAK: No, I have nothing to add.

10 JUDGE STEINBERG: Okay. Is there any kind of
11 common position as to where we go from here? Or do we just
12 exchange exhibits tomorrow or exchange exhibits on the ones
13 where you're not close? Or, I mean, do you want me to leave
14 and you can discuss it, and then I'll come back, because I
15 see that there -- there doesn't look to me like there's been
16 any, just from reading of minds and eyes, it doesn't look
17 like something that's been discussed.

18 MS. HENRY: I can certainly talk about it. I
19 don't see any harm in doing that and --

20 JUDGE STEINBERG: You want to talk among
21 yourselves? I mean --

22 MS. HENRY: Sure.

23 JUDGE STEINBERG: -- are Sprint and Ascom closer
24 than they were the last time?

25 MS. HENRY: No, we haven't moved at all, because

1 after the meeting, Sprint posed questions to us.

2 JUDGE STEINBERG: Okay.

3 MS. HENRY: And then we have spent the time --

4 JUDGE STEINBERG: You mean after we met last week?

5 MS. HENRY: After our last hearing, Sprint posed
6 questions. We've spent time responding. We haven't changed
7 our position.

8 JUDGE STEINBERG: Okay.

9 MS. HENRY: Sprint hasn't had the information to
10 change its, one way or another --

11 JUDGE STEINBERG: Okay.

12 MS. HENRY: -- to the extent that it required the
13 information to change its position, so we got Sprint the
14 information last night.

15 JUDGE STEINBERG: Okay. And I'm not going to ask
16 you anything about that information, because if you just got
17 it last night, then you haven't had a chance to evaluate it
18 and discuss it with whomever you have to discuss it with.
19 And it would be unfair for me to ask you to comment on that,
20 so I won't. Does the bureau have anything that they want to
21 add.

22 MS. MEHTA: No, we do not.

23 JUDGE STEINBERG: I mean if there's a -- I've said
24 all along I'd rather spend -- rather you spend time and
25 money negotiating than preparing for hearing, but we're

1 getting pretty close.

2 MS. HENRY: We are preparing.

3 JUDGE STEINBERG: Oh, I would expect that you
4 would be. But I mean just, I imagine, the savings and the
5 printing bill would be substantial.

6 MS. HENRY: Yes. In fact, even the photocopying
7 bill, we've held off on some things. But there are some
8 things that we'll have to let go soon that we simply can't
9 wait anymore to get it done.

10 JUDGE STEINBERG: Because if you can come up with
11 a position that you're all comfortable with, then it makes
12 my job easier.

13 MS. HENRY: Well, why don't we take a moment if
14 you'll give us a moment.

15 JUDGE STEINBERG: Okay. Let me disappear for 10
16 minutes.

17 MS. HENRY: Sure.

18 JUDGE STEINBERG: And if I hear things being
19 thrown up against the wall, I'll -- I won't come back in
20 yet. Okay. We'll go off the record.

21 (Whereupon, a break was taken from 9:45 a.m. to
22 10:00 a.m.)

23 JUDGE STEINBERG: Okay. Do you -- I guess you
24 don't need more time?

25 MALE SPEAKER: I don't. I don't know if the --

1 MS. HENRY: We're done with Verizon. Do you want
2 to talk anymore, Mary, before we start?

3 MS. SISK: No. No, I thought we finished
4 already.

5 MS. HENRY: All right. I think we're ready, then.

6 JUDGE STEINBERG: Okay. Back on the record,
7 please. Mr. Shook, you want to enter an appearance? Or can
8 I just say Jim Shook is now here for the -- thank you.
9 Okay. Did you settle everything amicably? I didn't hear
10 chairs.

11 MR. GOODMAN: We settled the scheduling amicably.

12 MS. HENRY: Yes.

13 JUDGE STEINBERG: Really?

14 MS. HENRY: We always get along with that.

15 JUDGE STEINBERG: Okay.

16 MS. HENRY: Here's what we've proposed.

17 JUDGE STEINBERG: Sounds good to me.

18 MS. HENRY: These are all driven by our
19 aspirations to settle, case by case. Alcazar, we have
20 agreed with Verizon that rather than submit our affidavits
21 and documents tomorrow, we will submit them on Monday.

22 JUDGE STEINBERG: Okay. So exhibit exchange for
23 Alcazar on Monday.

24 MS. HENRY: Monday rather than Friday. And we
25 have rescheduled a deposition, which I don't think we have

1 to bother you with. But we've rescheduled a deposition.

2 JUDGE STEINBERG: No, I don't care about the
3 deposition. So Monday is --

4 MS. HENRY: The 15th.

5 JUDGE STEINBERG: -- the 15th.

6 MS. HENRY: For Millicom, we've agreed to
7 reschedule the document exchange till Tuesday, the 16th.

8 JUDGE STEINBERG: Okay.

9 MS. HENRY: At this point, we have left Ascom's
10 date as is. If Mr. Goodman and I can't come to terms this
11 afternoon, we will be back to you with a request to change
12 the exchange date on that. But we're not to that point yet.

13 JUDGE STEINBERG: Okay. Let me see. I have a
14 doctor's appointment tomorrow morning. Why don't you call
15 me tomorrow, tomorrow morning.

16 MS. HENRY: Okay.

17 JUDGE STEINBERG: And I won't put out any kind of
18 order until I hear from everybody or until I hear from
19 whoever I have to hear from. I have a doctor's appointment
20 at 10:00. I should -- there's no reason I shouldn't be back
21 by 11 unless I want to stay in the good part of town to eat.
22 But that's too early.

23 MS. HENRY: Now --

24 JUDGE STEINBERG: Okay.

25 MS. HENRY: -- I also want to say one more thing

1 on Millicom. Even these dates are on the assumption that I
2 can locate my client. It is a serious issue. And we're
3 going to continue to see what we can do on that. And I may
4 need to come back and --

5 JUDGE STEINBERG: I mean he's not a reservist or
6 anything, is he?

7 MS. HENRY: I don't think he is.

8 MALE SPEAKER: I don't believe so.

9 MS. HENRY: I think this must have something to do
10 with his medical issue. But I honestly don't know. I'm not
11 going to make a representation. I just want to find him.

12 JUDGE STEINBERG: Sure.

13 MS. HENRY: And we're going to see if there are
14 any other avenues we've forgotten to try to locate him.
15 We've also agreed with Verizon to move the date for Verizon
16 to notify us of those witnesses it wishes to cross-examine
17 from the 22nd to the 24th, because we've had to move some
18 deposition dates around.

19 JUDGE STEINBERG: Okay. And I presume that
20 Verizon's not going to have a direct case so that there
21 wouldn't be any notification going the other way?

22 MR. GOODMAN: That's correct.

23 MS. HENRY: As to Sprint, I just don't think we're
24 going to make any progress.

25 JUDGE STEINBERG: Okay.

1 MS. HENRY: So I think, you know, we're prepared
2 to go ahead and do our submissions tomorrow and depose the
3 Sprint witnesses. We've been told that they'll be giving us
4 dates. We don't yet have them. But they are going to be
5 giving us dates to help today. For those witnesses, we'll
6 do the depositions and probably proceed to hearing on that
7 claim.

8 JUDGE STEINBERG: Okay. It wouldn't do any good
9 to put the Sprint thing off till Monday, and then maybe you
10 can talk over the weekend?

11 MS. HENRY: I'm welcome to do that. It's really
12 up to Sprint.

13 JUDGE STEINBERG: Probably not.

14 MS. HENRY: It's up to Sprint at this point, Your
15 Honor.

16 JUDGE STEINBERG: Okay.

17 MS. HENRY: It really is. Once -- and I've told
18 Sprint -- once we go through the exercise and the
19 submissions tomorrow and the affidavits, our position
20 hardens. I mean that's just the nature of the situation.

21 JUDGE STEINBERG: Well, you've got more money into
22 it. Your client's got more money into it, and then I
23 suppose there'll be three separate direct cases.

24 MS. HENRY: The facts, I believe, will be
25 substantially the same. But we still have all the

1 photocopying. And those expenses will be high. So we have
2 that issue.

3 And then, of course, it's the deposition costs
4 we'll have, I presume, next week. And it's a small claim.
5 So once you start doing those things, you, either way, it's
6 your ability to settle. So that's where we stand.

7 JUDGE STEINBERG: Okay. If that's the way it is,
8 that's the way it is. I would just -- I mean, do you report
9 -- sort of -- is Ms. Davis -- your client sort of, I mean,
10 Rikke Davis? She was here like the first -- she works for
11 Sprint. Right?

12 MS. HENRY: Correct.

13 JUDGE STEINBERG: Okay. But she's not the one
14 that -- because I was going to just suggest, perhaps --
15 never mind. We're not going to see that anyway.

16 MS. SISAK: Your Honor, I need to talk with my
17 client about the letter that I received last night after
18 business hours.

19 JUDGE STEINBERG: Right.

20 MS. SISAK: So I'm really not in a position to
21 respond to anything. I still believe that there is not a
22 significant dollar differential and that this case could be
23 settled. But that has always been my position. And
24 apparently, that's not the position of Ascom.

25 So I will be -- I will talk with my client today

1 about the letter we've received. I will give Ms. Henry a
2 call. And like I said, as far as I'm concerned, I don't
3 know why this case can't be settled. And we're perfectly
4 prepared to discuss settlement. But we have been unable to
5 have any settlement discussions, although we have offered to
6 have discussions. So that's all I can say.

7 JUDGE STEINBERG: Well, I think in terms --
8 somebody correct me if I'm wrong -- in terms of the
9 difference, I think Ascom's position is that it's the -- the
10 difference is not insignificant to them.

11 And my understanding is the more they have
12 invested in the litigation, the less likely they are to
13 settle, because it eats into the settlement proceeds. So I
14 think if there's an exhibit exchange, they are not going to
15 settle, because they'll have too much invested in it.

16 And my interest, frankly, is to get these cases
17 settled, because I don't want to have to sit here and listen
18 to this. And I don't want to have to sit here and write a
19 decision.

20 And I think I told you all from the very beginning
21 that once the discovery was completed, I see no reason why
22 every single one of these cases shouldn't be settled. And
23 you know, if Sprint wants to play hardball, Sprint is
24 certainly entitled to play hardball.

25 MS. SISAK: Excuse me, Your Honor. I'd like to

1 object to that characterization.

2 JUDGE STEINBERG: That's fine. Your objection is
3 noted. But I mean you're perfectly within your rights to do
4 whatever you want to do. But I just think that there's
5 absolutely no reason why this shouldn't be settled. And if
6 it can be settled this weekend, I think it should.

7 I'm going to, on my own motion, put off the
8 exhibit exchange to Sprint until Monday, too. And then
9 maybe you can -- and that way you have a chance to talk to
10 your client. And if you need more time for notification, if
11 there is an exhibit exchange, you'll get more time for
12 notification.

13 MS. SISAK: Your Honor, I would respectfully
14 request that you not move the date. I can talk to my client
15 this morning. I can get back to Ms. Henry this afternoon.
16 But you know, frankly, the last time I asked Ms. Henry to
17 have a discussion, she pretty much told me there was no
18 point in having a discussion. And I don't really think, if
19 I get the same kind of response when I call her this
20 afternoon, then I feel that we would like to see what their
21 direct case is tomorrow.

22 JUDGE STEINBERG: Well, then I don't expect Ms.
23 Henry to respond that way.

24 MS. HENRY: Your Honor?

25 JUDGE STEINBERG: I mean if there's room for

1 substantive --

2 MS. SISAK: Well then, Your Honor, I respectfully
3 request that we keep the date for exhibit exchange set for
4 tomorrow. And if Ms. Henry and I have a productive
5 conversation this afternoon, we can call you at that time
6 and request an extension at that time.

7 JUDGE STEINBERG: Does that sound good?

8 MS. HENRY: Your Honor --

9 JUDGE STEINBERG: I mean --

10 MS. HENRY: -- as you know, I don't -- I don't
11 oppose an extension on the exhibit exchange date. Too, it's
12 evident by the -- what has occurred with all the other
13 cases, we're very interested in settling. And I think we're
14 very reasonable about it.

15 The problem really has been that we just felt that
16 like there's been no negotiations, because the differences
17 are so enormous. For the small claim, nevertheless, the
18 differences are enormous. I'm certainly available to have
19 discussions with Ms. Sisak and, you know, look forward to
20 trying to resolve it. That's been our position all along.

21 JUDGE STEINBERG: Okay. I'm going to overrule
22 your objection. I'm going to move it on my own motion till
23 Monday. And I'd urge the two of you, if at all possible, to
24 get together and have some amicable discussions. And I
25 don't expect anybody to be rude to anybody. I don't expect

1 anybody to brush anybody off. And I expect people to come
2 to the table willing to negotiate.

3 And frankly, a good settlement is one nobody is
4 happy with. So I'd urge the both of you, you know, to gain
5 for something that nobody's happy with, except for me.
6 Okay. I mean if there's nothing productive going on, I
7 don't see that one business day is going to make any
8 difference, a large difference.

9 MS. HENRY: No. And, Your Honor, of course last
10 time we also proposed even if we can't make progress by
11 talking with each other, though I would hope that we could,
12 you know, we proposed before that we would be glad to submit
13 our case to you on an informal basis to see if that would --

14 JUDGE STEINBERG: I'm still willing to do that if
15 everybody else is. And I mean that's okay with me. I'll do
16 whatever I can to help. Okay. So I will wait. I won't put
17 out any kind of order.

18 And I'll wait until I hear from somebody tomorrow
19 morning or -- I mean I'm usually here from a little after
20 7:00 till about 4:00. So you know don't bother calling
21 after four. And except for the time I need to go to the
22 doctor, I don't think I'm going anywhere. But you never can
23 tell.

24 MS. HENRY: Okay.

25 JUDGE STEINBERG: Okay. Anything more that we

1 have to talk about? Okay. Then we'll go off the record
2 now. And I'll just say that I'm not going to schedule any
3 more prehearing conferences.

4 If there are more settlements, I suppose somebody
5 can notify me by telephone as to what's going on without any
6 objection from anybody else. Or if you want to have a
7 conference call, we can have a conference call. If somebody
8 needs a conference, or wants a conference, call me up and
9 I'll schedule one. Okay?

10 MS. HENRY: All right.

11 (Whereupon, at 10:10 a.m., the hearing in the
12 above-entitled matter was adjourned.)

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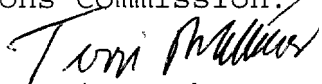
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